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Michele M. Angeles, Esq. (SBN 228004)
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San Diego, California 92101
(619) 338-0300 / (619) 338-0180 (Fax)

Attorneys for Defendants
REPOSSESSION SPECIALIST, INC. and PAR, INC. DBA PAR NORTH
AMERICA

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

JOSEPHINE THORNTON,

Plaintiff,

v.

ABA RECOVERY SERVICE, INC.,
PAR, INC. dba PAR NORTH
AMERICAN, and DOES 1 through 10,
inclusive,

Defendants.

CASE NO.: 15CV1971 CAB KSC

**DECLARATION OF MICHELE
M. ANGELES IN SUPPORT OF
MOTION FOR LEAVE TO FILE
AMENDED ANSWER ON
BEHALF OF DEFENDANT
REPOSSESSION SPECIALISTS**

Date: April 13, 2016

PER CHAMBERS, NO ORAL
ARGUMENT UNLESS ORDERED
BY THE COURT

District Judge: Hon. Cathy Ann
Bencivengo /

Courtroom 4C
Magistrate Judge: Hon. Karen S.
Crawford

Action Filed: September 3, 2015
Trial Date: Not Yet Assigned

I, Michele M. Angeles, Esq. declare:

1. I am an attorney at law duly licensed to practice before all the courts of
the State of California. I am an associate with the law firm of Farmer Case & Fedor,

1 attorneys of record for Defendants REPOSSESSION SPECIALIST, INC. and PAR,
2 INC. DBA PAR NORTH AMERICA.

3 2. The matters set forth in this declaration are based on my own personal
4 knowledge, and if called as a witness, I could and would competently testify to the
5 matters discussed herein, with the exception of those facts stated upon information
6 and belief, in which event I affirmatively believe them to be true.

7 3. I make this declaration in support of the Motion for Leave to File an
8 Amended Answer.

9 4. On September 3, 2015, plaintiff JOSEPHINE THORNTON filed a
10 complaint for alleged violations of various State and Federal fair debt collection
11 practices against ABA RECOVERY SERVICE, INC. and PAR, INC. DBA PAR
12 NORTH AMERICA.

13 5. On October 16, 2015, Defendant REPOSSESSION SPECIALIST,
14 INC. DBA ABA RECOVERY SERVICE, INC. appeared and filed an Answer. On
15 January 4, 2016, PAR, INC. appeared and filed a Motion to Dismiss.

16 6. On January 13, 2016, Plaintiff filed her First Amended Complaint
17 naming ABA RECOVERY SERVICE, INC., REPOSSESSION SPECIALISTS,
18 PAR INC, DBA PAR NORTH AMERICA, and FIRST ASSOCIATES LOAN
19 SERVICING, LLC DBA MEGA AUTO FINANCE.

20 7. On February 2, 2016, REPOSSESSION SPECIALIST, INC. filed an
21 Answer to Plaintiff's First Amended Complaint. Unfortunately, the Answer on
22 behalf of Repossession Specialist named the incorrect entity and as such, the
23 Answer needs to be amended to name the proper entity.

24 8. I have not yet seen an appearance by Defendant FIRST ASSOCIATES
25 LOAN SERVICING, LLC DBA MEGA AUTO FINANCE in this action.

26 9. I provided a proposed stipulation for consideration and execution by
27 Plaintiff's counsel concerning this amendment. Counsel for Plaintiff proposed a
28 different stipulation. However, I felt that Plaintiff's proposed stipulation was not

1 sufficient and appeared to focus more on Plaintiff's First Amended Complaint rather
2 than the amended Answer. So I felt that court intervention was necessary.

3 10. I submit that the parties will not be prejudiced by this amended
4 pleading as it will identify the proper party and correct an inadvertent mistake.

5 11. A true and correct copy of the proposed Amended Answer is attached
6 hereto as Exhibit "A." A true and correct copy of the proposed Amended Answer,
7 with items to be removed with strikeouts and items to be added underlined pursuant
8 to CivLR 15.1(b), is attached hereto as Exhibit "B."

9 I declare under penalty of perjury under the laws of the State of California
10 that the foregoing is true and correct, and that this Declaration was executed on
11 March 16, 2016, at San Diego, California.

12 /s/ Michele M. Angeles
13 MICHELE M. ANGELES
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1 **Case Name:** Thornton v. ABA Recovery Service, Inc., et al.
2 **Southern District Court of California:** 15CV1971 CAB KSC

3 **DECLARATION OF SERVICE**

4 I hereby declare as follows:

5 I am, and was at the time of service of the papers referred to herein, over the
6 age of eighteen (18) years, not a party to the action, and employed in the County of
7 San Diego, State of California. My business address is 402 W. Broadway, Suite
8 1100, San Diego, California 92101.

9 I caused to be served the following document(s):

10 **DECLARATION OF MICHELE M. ANGELES IN SUPPORT OF**
11 **MOTION FOR LEAVE TO FILE AMENDED ANSWER ON BEHALF**
12 **OF DEFENDANT REPOSSESSION SPECIALISTS**

13 of which THE ORIGINAL DOCUMENT OR A TRUE AND CORRECT COPY is
14 attached hereto, addressed to each such addressee respectively as follows:

15 Alexander B. Trueblood, Esq.
16 Trueblood Law Firm
17 10940 Wilshire Blvd., Ste. 1600
18 Los Angeles, CA 90024
19 (310) 443-4139 / Fax: (310) 943-2255
20 alec@hush.com
21 **COUNSEL FOR PLAINTIFF**
22 **JOSEPHINE THORNTON**

23 ☒ **BY CM/ECF:** I electronically filed the foregoing document(s) with the Clerk
24 of the Court using the CM/ECF system, which will send an email notification of
25 such filing to the person(s) so designated above.

26 ☐ **BY E-MAIL:** I caused said document(s) to be delivered via electronic mail (e-
27 mail) to the person(s) so designated above.

28 ☐ **BY U.S. MAIL:** I placed each sealed, prepaid envelope for collection and
mailing at 402 W. Broadway, San Diego, California, 92101. I am readily familiar
with the business practice for collection and processing of correspondence for
mailing with the United States Postal Service pursuant to which practice the
correspondence will be deposited with the United States Postal Service this same
day in the ordinary course of business.

☐ **BY FACSIMILE:** I caused said document(s) to be transmitted by facsimile
transmission. The name(s) and facsimile machine telephone number(s) of the
person(s) served are set forth above. The sending facsimile machine properly
issued a transmission report confirming that the transmission was complete and
without error.

☐ **BY OVERNIGHT MAIL:** I caused said document(s) to be deposited in a box or
other facility regularly maintained by an express service carrier providing overnight
delivery in an envelope or package designated by the express service carrier with
delivery fees paid or provided.

1 ☐ **BY PERSONAL SERVICE:** I caused such document(s) to be hand-delivered to
2 the person(s) served hereunder. A separate Proof of Personal Service will be
provided.

3 I declare under penalty of perjury under the laws of the State of California
4 that the foregoing is true and correct. Executed March 16, 2016.

5 /s/ Christina Fedor
Christina Fedor

EXHIBIT A

Anthony T. Case, Esq. (SBN 149583)
Michele M. Angeles, Esq. (SBN 228004)
FARMER CASE & FEDOR
402 W. Broadway, Suite 1100
San Diego, California 92101
(619) 338-0300 / (619) 338-0180 (Fax)

Attorneys for Defendant
REPOSSESSION SPECIALISTS, a California corporation

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

JOSEPHINE THORNTON,

Plaintiff,

v.

ABA RECOVERY SERVICE, INC.,
REPOSSESSION SPECIALISTS,
PAR, INC. dba PAR NORTH
AMERICA, FIRST ASSOCIATES
LOAN SERVICING, LLC dba MEGA
AUTO FINANCE, and DOES 1
through 10, inclusive

Defendants.

CASE NO.: 15CV1971 CAB KSC

**AMENDED ANSWER ON
BEHALF OF DEFENDANT
REPOSSESSION SPECIALISTS,
A CALIFORNIA
CORPORATION, TO
PLAINTIFF'S FIRST AMENDED
COMPLAINT**

District Judge: Hon. Cathy Ann
Bencivengo / Courtroom 4C
Magistrate Judge: Hon. Karen S. Crawford
Action Filed: September 3, 2015
Trial Date: Not Yet Assigned

Comes now Defendant REPOSSESSION SPECIALISTS, a California corporation, by and through counsel, and amends its Answer to Plaintiff's First Amended Complaint on file herein, states as follows:

1. In answer to paragraph 1, Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 1 and denies such allegations.

2. In answer to paragraph 2, Defendant denies each and every allegation contained in paragraph 2.

1 3. In answer to paragraph 3, Defendant lacks sufficient knowledge or
2 information to form a belief as to the truth of the allegations contained in
3 paragraph 3 and denies such allegations.

4 4. In answer to paragraph 4, Defendant denies each and every allegation
5 contained in paragraph 4.

6 5. In answer to paragraph 5, Defendant denies each and every allegation
7 contained in paragraph 5.

8 6. In answer to paragraph 6, admits the jurisdiction allegations in
9 paragraph 6.

10 7. In answer to paragraph 7, Defendant admits the venue allegations in
11 paragraph 7.

12 8. In answer to paragraph 8, Defendant lacks sufficient knowledge or
13 information to form a belief as to the truth of the allegations contained in
14 paragraph 8 and denies such allegations.

15 9. In answer to paragraph 9, Defendant lacks sufficient knowledge or
16 information to form a belief as to the truth of the allegations contained in
17 paragraph 9 and denies such allegations.

18 10. In answer to paragraph 10, Defendant admits the incorporation
19 allegations contained in paragraph 10.

20 11. In answer to paragraph 11, lacks sufficient knowledge or information
21 to form a belief as to the truth of the allegations contained in paragraph 11 and
22 denies such allegations.

23 12. In answer to paragraph 12, Defendant lacks sufficient knowledge or
24 information to form a belief as to the truth of the allegations contained in
25 paragraph 12 and denies such allegations.

26 13. In answer to paragraph 13, Defendant lacks sufficient knowledge or
27 information to form a belief as to the truth of the allegations contained in
28 paragraph 13 and denies such allegations.

1 14. In answer to paragraph 14, Defendant denies each and every
2 allegation contained in paragraph 14.

3 15. In answer to paragraph 15, Defendant realleges all responses to
4 paragraphs 1-14 as though fully set herein.

5 16. In answer to paragraph 16, Defendant denies each and every
6 allegation contained in paragraph 16.

7 17. In answer to paragraph 17, Defendant lacks sufficient knowledge or
8 information to form a belief as to the truth of the allegations contained in
9 paragraph 17 and denies such allegations.

10 18. In answer to paragraph 18, Defendant denies each and every
11 allegation contained in paragraph 18.

12 19. In answer to paragraph 19, Defendant lacks sufficient knowledge or
13 information to form a belief as to the truth of the allegations against ABA
14 Recovery and the Doe Defendants contained in paragraph 19 and denies such
15 allegations. Defendant denies each and every allegation against it contained in
16 paragraph 19.

17 20. In answer to paragraph 20, Defendant lacks sufficient knowledge or
18 information to form a belief as to the truth of the allegations contained in
19 paragraph 20 and denies such allegations.

20 21. In answer to paragraph 21, Defendant denies each and every
21 allegation contained in paragraph 21.

22 22. In answer to paragraph 22, Defendant denies each and every
23 allegation contained in paragraph 22.

24 23. In answer to paragraph 23, Defendant denies each and every
25 allegation contained in paragraph 23.

26 24. In answer to paragraph 24, Defendant realleges all responses to
27 paragraphs 1-23 as though fully set herein.

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1 25. In answer to paragraph 25, Defendant lacks sufficient knowledge or
2 information to form a belief as to the truth of the allegations contained in
3 paragraph 25 and denies such allegations.

4 26. In answer to paragraph 26, Defendant lacks sufficient knowledge or
5 information to form a belief as to the truth of the allegations contained in
6 paragraph 26 and denies such allegations.

7 27. In answer to paragraph 27, Defendant denies each and every
8 allegation contained in paragraph 27.

9 28. In answer to paragraph 28, Defendant denies each and every
10 allegation contained in paragraph 28.

11 29. In answer to paragraph 29, Defendant denies each and every
12 allegation contained in paragraph 29.

13 30. In answer to paragraph 30, Defendant lacks sufficient knowledge or
14 information to form a belief as to the truth of the allegations contained in
15 paragraph 30 and denies such allegations.

16 31. In answer to paragraph 31, Defendant denies each and every
17 allegation contained in paragraph 31.

18 32. In answer to paragraph 32, Defendant denies each and every
19 allegation contained in paragraph 32.

20 33. In answer to paragraph 33, Defendant denies each and every
21 allegation contained in paragraph 33.

22 34. In answer to paragraph 34, Defendant denies each and every
23 allegation contained in paragraph 34.

24 35. In answer to paragraph 35, Defendant denies each and every
25 allegation contained in paragraph 35.

26 36. In answer to paragraph 36, Defendant reallages all responses to
27 paragraphs 1-35 as though fully set herein.

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1 37. In answer to paragraph 37, Defendant denies each and every
2 allegation contained in paragraph 37.

3 38. In answer to paragraph 38, Defendant denies each and every
4 allegation contained in paragraph 38.

5 39. In answer to paragraph 39, Defendant lacks sufficient knowledge or
6 information to form a belief as to the truth of the allegations contained in
7 paragraph 39 and denies such allegations.

8 40. In answer to paragraph 40, Defendant lacks sufficient knowledge or
9 information to form a belief as to the truth of the allegations contained in
10 paragraph 40 and denies such allegations.

11 41. In answer to paragraph 41, Defendant denies each and every
12 allegation contained in paragraph 41.

13 42. In answer to paragraph 42, Defendant denies each and every
14 allegation contained in paragraph 42.

15 **FIRST AFFIRMATIVE DEFENSE**

16 43. Defendant is informed and believes and on that basis alleges that
17 Plaintiff's First Amended Complaint fails to state a claim against Defendant for
18 which relief may be granted.

19 **SECOND AFFIRMATIVE DEFENSE**

20 44. Defendant is informed and believes and upon such information and
21 belief alleges that at all times mentioned herein, if any Defendant was negligent,
22 the conduct of all other parties, both known and unknown, should be compared to
23 determine the degree of fault, if any, between the parties.

24 **THIRD AFFIRMATIVE DEFENSE**

25 45. Defendant is informed and believes and upon such information and
26 belief alleges that at all times mentioned herein, Plaintiff was negligent, careless
27 and reckless and unlawfully conducted herself so as to substantially contribute to
28 Plaintiff's alleged injuries and damages compared to the conduct of all other

1 parties, all of which said negligence either bars in whole or in part damages sought
2 herein.

3 **FOURTH AFFIRMATIVE DEFENSE**

4 46. Defendant is informed and believes and upon such information and
5 belief alleges that at the time and place of the incident alleged in Plaintiff's First
6 Amended Complaint, the Plaintiff knew of the danger and risk incident to the
7 undertaking, but despite such knowledge, Plaintiff freely and voluntarily assumed
8 and exposed herself to all risk of harm and the consequential injuries and damages,
9 if any, therefrom.

10 **FIFTH AFFIRMATIVE DEFENSE**

11 47. Defendant is informed and believes and thereon alleges that in the
12 event Plaintiff should establish any liability on the part of this answering
13 Defendant, which liability is expressly denied, this answering Defendant may not
14 be obligated to pay sums representing a proportion or percentage of fault not
15 his/her own, but that of Plaintiff, other parties to this action and third persons not
16 parties to this action. Defendant is entitled to an adjudication and determination of
17 the respective proportions or percentages of fault, if any, on this answering
18 Defendant's part and on the part of the Plaintiff and other parties to this action and
19 third persons not parties to this action pursuant to the Doctrines of Comparative
20 Negligence and the Fair Responsibility Act of 1986, codified in Civil Code §1431-
21 1431.5.

22 **SIXTH AFFIRMATIVE DEFENSE**

23 48. Defendant is informed and believes and thereon alleges that at all
24 times mentioned herein, if any defendant was negligent, co-defendants, both
25 known and unknown, were negligent, careless and reckless and unlawfully
26 conducted themselves so as to substantially contribute to Plaintiff's injuries,
27 damages and losses, and said negligence, if any, either bars in whole or in part
28 damages sought herein against this answering defendant.

1 **SEVENTH AFFIRMATIVE DEFENSE**

2 49. Defendant is informed and believes and thereupon alleges that its
3 action or inaction was not the sole, legal or proximate cause of the incidents upon
4 which liability is based or damages awarded, if any, and that damages awarded, if
5 any, must be apportioned according to the respective fault of all parties, persons or
6 entities, or their agents, servants and employees, whether or not parties to this
7 litigation, who contributed to or caused the incidents or damages alleged in the
8 First Amended Complaint.

9 **EIGHTH AFFIRMATIVE DEFENSE**

10 50. This answering Defendant is informed and believes and thereon
11 alleges that the negligence, if any, of this answering Defendant was not a
12 substantial factor in bringing about the Plaintiff's alleged injuries and damages,
13 and therefore was not a contributing cause thereof, but was superseded by the
14 negligence of others, whose negligence was an independent, intervening,
15 superseding and a proximate cause of any injury or damage suffered by the
16 Plaintiff.

17 **NINTH AFFIRMATIVE DEFENSE**

18 51. Defendant is informed and believes and upon such information and
19 belief alleges that Plaintiff has failed to mitigate the damages referred to in the
20 First Amended Complaint, barring relief, in whole or in part, as to this answering
21 Defendant.

22 **TENTH AFFIRMATIVE DEFENSE**

23 52. This answering Defendant is informed and believes and thereon
24 alleges that Plaintiff's claims are barred by Plaintiff's own willful misconduct.

25 **ELEVENTH AFFIRMATIVE DEFENSE**

26 53. This answering Defendant is informed and believes and thereon
27 alleges that Plaintiff's claims are barred by the doctrine of estoppel.

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2 **TWELFTH AFFIRMATIVE DEFENSE**

3 54. This answering Defendant is informed and believes and thereon
4 alleges that Plaintiff's claims are barred by the doctrine of waiver.

5 **THIRTEENTH AFFIRMATIVE DEFENSE**

6 55. This answering Defendant is informed and believes and thereon
7 alleges that the First Amended Complaint and the averments thereof are uncertain,
8 vague and ambiguous.

9 **FOURTEENTH AFFIRMATIVE DEFENSE**

10 56. This answering Defendant is informed and believes and thereon
11 alleges that the First Amended Complaint and every cause of action contained
12 therein, is barred by the provisions of California Code of Civil Procedure Sections
13 337, 337.1, 337.15, 338, 339, 339.5, 340, 342, 343, as well as Civil Code Section
14 2079.4, and any and all other applicable statutes of limitation.

15 **FIFTEENTH AFFIRMATIVE DEFENSE**

16 57. This answering Defendant is informed and believes and thereon
17 alleges that Plaintiff has voluntarily engaged in wrongful and bad faith conduct and
18 activities with respect to the matters and transactions referred to in the First
19 Amended Complaint herein, barring any and all relief against this answering
20 Defendant under the doctrine of unclean hands.

21 **SIXTEENTH AFFIRMATIVE DEFENSE**

22 58. This answering Defendant is informed and believes and thereon
23 alleges that Plaintiff's claims that Defendant engaged in unfair debt collection
24 practices in violation of the Fair Debt Collections Practices Act and California
25 Civil Code §§1788, et seq., are barred by other provisions of Federal and
26 California State law.

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1 **SEVENTEENTH AFFIRMATIVE DEFENSE**

2 59. This answering Defendant is informed and believes and thereon
3 alleges that Plaintiff has failed to plead with particularity the circumstances
4 constituting the alleged fraud and/or misrepresentation.

5 **EIGHTEENTH AFFIRMATIVE DEFENSE**

6 60. This answering Defendant is informed and believes and thereon
7 alleges that Plaintiff has engaged in conduct and activities, pursuant to which she
8 has waived any and all claims and/or causes of action she may have against this
9 answering Defendant.

10 **NINTEENTH AFFIRMATIVE DEFENSE**

11 61. This answering Defendant is informed and believes and thereon
12 alleges that Plaintiff has engaged in conduct and activities by reason of which she
13 is estopped to assert any claim or cause of action against this answering Defendant.

14 **TWENTIETH AFFIRMATIVE DEFENSE**

15 62. This answering Defendant is informed and believes and thereon
16 alleges that Plaintiff has not suffered any injury or damage whatsoever, and further
17 denies that Defendant is liable to Plaintiff for any injury or damage whatsoever.

18 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

19 63. This answering Defendant is informed and believes and thereon
20 alleges that this Defendant has met all appropriate standards for professional
21 conduct according to all rules promulgated in the Business and Professions and
22 Civil Code Sections.

23 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

24 64. This answering Defendant is informed and believes and thereon
25 alleges that the Plaintiff's claims are barred, because the alleged acts of Defendant,
26 forming the basis of the First Amended Complaint, were lawful, explicitly
27 approved and/or exempt from prosecution.

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2 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

3 65. This answering Defendant is informed and believes and thereon
4 alleges that Plaintiff's claims are barred, in whole or in part, because Defendant, at
5 all times, acted in good faith and did not directly or indirectly perform any act
6 whatsoever that would constitute a violation of any right of Plaintiff's or any duty
7 owed to Plaintiff.

8 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

9 66. This answering Defendant is informed and believes and thereon
10 alleges that the alleged representations are not actionable statements of fact under
11 applicable law.

12 **TWENTY-FIFTH AFFIRMATIVE DEFENSE**

13 67. This answering Defendant denies each and every claim of Plaintiff
14 and denies that Defendant engaged in any wrongdoing or error of any kind.
15 However, should any alleged error be identified, then Plaintiff's claims are barred
16 because any alleged error on Defendant's part was a bona fide error
17 notwithstanding Defendant's use of reasonable procedures adopted to avoid any
18 such error.

19 **TWENTY-SIXTH AFFIRMATIVE DEFENSE**

20 68. This answering Defendant is informed and believes and thereon
21 alleges that Plaintiff has failed to set forth facts sufficient to support an award for
22 attorneys' fees.

23 **TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

24 69. This answering Defendant is informed and believes and thereon
25 alleges that it is entitled to the reasonable value of its attorneys' fees, costs of suit
26 and other litigation expenses incurred in the defense of this action.

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1 **TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

2 70. This answering Defendant is informed and believes and thereon
3 alleges that the First Amended Complaint and the purported causes of action
4 alleged therein fail to set forth facts sufficient to allow for recovery of punitive or
5 exemplary damages from Defendant.

6 **TWENTY-NINTH AFFIRMATIVE DEFENSE**

7 71. This answering Defendant is informed and believes and thereon
8 alleges that the First Amended Complaint, to the extent it seeks punitive or
9 exemplary damages, violates the rights of Defendant to procedural and substantive
10 due process under the Fourteenth Amendment to the United States Constitution
11 and under the Constitution of the State of California.

12 **THIRTIETH AFFIRMATIVE DEFENSE**

13 72. This answering defendant alleges that plaintiff lacks the standing to
14 bring suit against this answering defendant before this Court.

15 **THIRTY-FIRST AFFIRMATIVE DEFENSE**

16 73. This answering defendant alleges that the negligent actions of others
17 constitute superseding, intervening causes of Plaintiff's alleged injuries and/or
18 damages.

19 **THIRTY-SECOND AFFIRMATIVE DEFENSE**

20 74. This answering defendant alleges that Plaintiff's First Amended
21 Complaint and each purported cause of action therein are barred by the doctrines of
22 express and implied consent by Plaintiff.

23 **THIRTY-THIRD AFFIRMATIVE DEFENSE**

24 75. This answering Defendant is informed and believes and thereon
25 alleges that the Plaintiff's First Amended Complaint, and each cause of action
26 therein, is stated in conclusory terms, and therefore said Defendant cannot fully
27 anticipate all affirmative defenses which may be applicable to this action.
28

1 Accordingly, this answering Defendant reserves the right to add additional
2 affirmative defenses.

3 WHEREFORE, this answering Defendant prays judgment against Plaintiff
4 as follows:

- 5 1. That Plaintiff take nothing by way of the First Amended Complaint;
- 6 2. That Judgment be entered in favor of Defendant and against Plaintiff
7 on all causes of action;
- 8 3. For attorneys' fees and costs of suit incurred herein; and
- 9 4. For such other and further relief as the Court may deem just and
10 proper.

11
12 Dated: March 16, 2016

FARMER CASE & FEDOR
By:

13
14
15 /s/ Anthony T. Case
16 ANTHONY T. CASE, ESQ.
17 MICHELE M. ANGELES, ESQ.
Attorneys for Defendant
REPOSSESSION SPECIALISTS, a
California corporation
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EXHIBIT B

Anthony T. Case, Esq. (SBN 149583)
Michele M. Angeles, Esq. (SBN 228004)
FARMER CASE & FEDOR
402 W. Broadway, Suite 1100
San Diego, California 92101
(619) 338-0300 / (619) 338-0180 (Fax)

Attorneys for Defendant
REPOSSESSION SPECIALISTS, INC., a California corporation

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

JOSEPHINE THORNTON,
Plaintiff,

v.

ABA RECOVERY SERVICE, INC.,
REPOSSESSION SPECIALISTS,
PAR, INC. dba PAR NORTH
AMERICA, FIRST ASSOCIATES
LOAN SERVICING, LLC dba MEGA
AUTO FINANCE, and DOES 1
through 10, inclusive

Defendants.

CASE NO.: 15CV1971 CAB KSC

**AMENDED ANSWER ON
BEHALF OF DEFENDANT
REPOSSESSION SPECIALISTS,
INC., A CALIFORNIA
CORPORATION, TO
PLAINTIFF'S FIRST AMENDED
COMPLAINT**

District Judge: Hon. Cathy Ann
Bencivengo / Courtroom 4C
Magistrate Judge: Hon. Karen S. Crawford
Action Filed: September 3, 2015
Trial Date: Not Yet Assigned

Comes now Defendant **REPOSSESSION SPECIALISTS, INC.**, a California corporation, (~~dba ABA Recovery Service~~) by and through counsel, and amends its Answer to Plaintiff's First Amended Complaint on file herein, states as follows:

1. In answer to paragraph 1, Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 1 and denies such allegations.

2. In answer to paragraph 2, Defendant denies each and every allegation contained in paragraph 2.

1 3. In answer to paragraph 3, Defendant lacks sufficient knowledge or
2 information to form a belief as to the truth of the allegations contained in
3 paragraph 3 and denies such allegations.

4 4. In answer to paragraph 4, Defendant denies each and every allegation
5 contained in paragraph 4.

6 5. In answer to paragraph 5, Defendant denies each and every allegation
7 contained in paragraph 5.

8 6. In answer to paragraph 6, admits the jurisdiction allegations in
9 paragraph 6.

10 7. In answer to paragraph 7, Defendant admits the venue allegations in
11 paragraph 7.

12 8. In answer to paragraph 8, Defendant lacks sufficient knowledge or
13 information to form a belief as to the truth of the allegations contained in
14 paragraph 8 and denies such allegations.

15 9. In answer to paragraph 9, Defendant lacks sufficient knowledge or
16 information to form a belief as to the truth of the allegations contained in
17 paragraph 9 and denies such allegations.

18 10. In answer to paragraph 10, Defendant admits the incorporation
19 allegations contained in paragraph 10.

20 11. In answer to paragraph 11, lacks sufficient knowledge or information
21 to form a belief as to the truth of the allegations contained in paragraph 11 and
22 denies such allegations.

23 12. In answer to paragraph 12, Defendant lacks sufficient knowledge or
24 information to form a belief as to the truth of the allegations contained in
25 paragraph 12 and denies such allegations.

26 13. In answer to paragraph 13, Defendant lacks sufficient knowledge or
27 information to form a belief as to the truth of the allegations contained in
28 paragraph 13 and denies such allegations.

1 14. In answer to paragraph 14, Defendant denies each and every
2 allegation contained in paragraph 14.

3 15. In answer to paragraph 15, Defendant realleges all responses to
4 paragraphs 1-14 as though fully set herein.

5 16. In answer to paragraph 16, Defendant denies each and every
6 allegation contained in paragraph 16.

7 17. In answer to paragraph 17, Defendant lacks sufficient knowledge or
8 information to form a belief as to the truth of the allegations contained in
9 paragraph 17 and denies such allegations.

10 18. In answer to paragraph 18, Defendant denies each and every
11 allegation contained in paragraph 18.

12 19. In answer to paragraph 19, Defendant lacks sufficient knowledge or
13 information to form a belief as to the truth of the allegations against ABA
14 Recovery and the Doe Defendants contained in paragraph 19 and denies such
15 allegations. Defendant denies each and every allegation against it contained in
16 paragraph 19.

17 20. In answer to paragraph 20, Defendant lacks sufficient knowledge or
18 information to form a belief as to the truth of the allegations contained in
19 paragraph 20 and denies such allegations.

20 21. In answer to paragraph 21, Defendant denies each and every
21 allegation contained in paragraph 21.

22 22. In answer to paragraph 22, Defendant denies each and every
23 allegation contained in paragraph 22.

24 23. In answer to paragraph 23, Defendant denies each and every
25 allegation contained in paragraph 23.

26 24. In answer to paragraph 24, Defendant realleges all responses to
27 paragraphs 1-23 as though fully set herein.

28 25. In answer to paragraph 25, Defendant lacks sufficient knowledge or

1 information to form a belief as to the truth of the allegations contained in
2 paragraph 25 and denies such allegations.

3 26. In answer to paragraph 26, Defendant lacks sufficient knowledge or
4 information to form a belief as to the truth of the allegations contained in
5 paragraph 26 and denies such allegations.

6 27. In answer to paragraph 27, Defendant denies each and every
7 allegation contained in paragraph 27.

8 28. In answer to paragraph 28, Defendant denies each and every
9 allegation contained in paragraph 28.

10 29. In answer to paragraph 29, Defendant denies each and every
11 allegation contained in paragraph 29.

12 30. In answer to paragraph 30, Defendant lacks sufficient knowledge or
13 information to form a belief as to the truth of the allegations contained in
14 paragraph 30 and denies such allegations.

15 31. In answer to paragraph 31, Defendant denies each and every
16 allegation contained in paragraph 31.

17 32. In answer to paragraph 32, Defendant denies each and every
18 allegation contained in paragraph 32.

19 33. In answer to paragraph 33, Defendant denies each and every
20 allegation contained in paragraph 33.

21 34. In answer to paragraph 34, Defendant denies each and every
22 allegation contained in paragraph 34.

23 35. In answer to paragraph 35, Defendant denies each and every
24 allegation contained in paragraph 35.

25 36. In answer to paragraph 36, Defendant reallages all responses to
26 paragraphs 1-35 as though fully set herein.

27 37. In answer to paragraph 37, Defendant denies each and every
28 allegation contained in paragraph 37.

1 38. In answer to paragraph 38, Defendant denies each and every
2 allegation contained in paragraph 38.

3 39. In answer to paragraph 39, Defendant lacks sufficient knowledge or
4 information to form a belief as to the truth of the allegations contained in
5 paragraph 39 and denies such allegations.

6 40. In answer to paragraph 40, Defendant lacks sufficient knowledge or
7 information to form a belief as to the truth of the allegations contained in
8 paragraph 40 and denies such allegations.

9 41. In answer to paragraph 41, Defendant denies each and every
10 allegation contained in paragraph 41.

11 42. In answer to paragraph 42, Defendant denies each and every
12 allegation contained in paragraph 42.

13 **FIRST AFFIRMATIVE DEFENSE**

14 43. Defendant is informed and believes and on that basis alleges that
15 Plaintiff's First Amended Complaint fails to state a claim against Defendant for
16 which relief may be granted.

17 **SECOND AFFIRMATIVE DEFENSE**

18 44. Defendant is informed and believes and upon such information and
19 belief alleges that at all times mentioned herein, if any Defendant was negligent,
20 the conduct of all other parties, both known and unknown, should be compared to
21 determine the degree of fault, if any, between the parties.

22 **THIRD AFFIRMATIVE DEFENSE**

23 45. Defendant is informed and believes and upon such information and
24 belief alleges that at all times mentioned herein, Plaintiff was negligent, careless
25 and reckless and unlawfully conducted herself so as to substantially contribute to
26 Plaintiff's alleged injuries and damages compared to the conduct of all other
27 parties, all of which said negligence either bars in whole or in part damages sought
28 herein.

1 **FOURTH AFFIRMATIVE DEFENSE**

2 46. Defendant is informed and believes and upon such information and
3 belief alleges that at the time and place of the incident alleged in Plaintiff's First
4 Amended Complaint, the Plaintiff knew of the danger and risk incident to the
5 undertaking, but despite such knowledge, Plaintiff freely and voluntarily assumed
6 and exposed herself to all risk of harm and the consequential injuries and damages,
7 if any, therefrom.

8 **FIFTH AFFIRMATIVE DEFENSE**

9 47. Defendant is informed and believes and thereon alleges that in the
10 event Plaintiff should establish any liability on the part of this answering
11 Defendant, which liability is expressly denied, this answering Defendant may not
12 be obligated to pay sums representing a proportion or percentage of fault not
13 his/her own, but that of Plaintiff, other parties to this action and third persons not
14 parties to this action. Defendant is entitled to an adjudication and determination of
15 the respective proportions or percentages of fault, if any, on this answering
16 Defendant's part and on the part of the Plaintiff and other parties to this action and
17 third persons not parties to this action pursuant to the Doctrines of Comparative
18 Negligence and the Fair Responsibility Act of 1986, codified in Civil Code §1431-
19 1431.5.

20 **SIXTH AFFIRMATIVE DEFENSE**

21 48. Defendant is informed and believes and thereon alleges that at all
22 times mentioned herein, if any defendant was negligent, co-defendants, both
23 known and unknown, were negligent, careless and reckless and unlawfully
24 conducted themselves so as to substantially contribute to Plaintiff's injuries,
25 damages and losses, and said negligence, if any, either bars in whole or in part
26 damages sought herein against this answering defendant.

1 **SEVENTH AFFIRMATIVE DEFENSE**

2 49. Defendant is informed and believes and thereupon alleges that its
3 action or inaction was not the sole, legal or proximate cause of the incidents upon
4 which liability is based or damages awarded, if any, and that damages awarded, if
5 any, must be apportioned according to the respective fault of all parties, persons or
6 entities, or their agents, servants and employees, whether or not parties to this
7 litigation, who contributed to or caused the incidents or damages alleged in the
8 First Amended Complaint.

9 **EIGHTH AFFIRMATIVE DEFENSE**

10 50. This answering Defendant is informed and believes and thereon
11 alleges that the negligence, if any, of this answering Defendant was not a
12 substantial factor in bringing about the Plaintiff's alleged injuries and damages,
13 and therefore was not a contributing cause thereof, but was superseded by the
14 negligence of others, whose negligence was an independent, intervening,
15 superseding and a proximate cause of any injury or damage suffered by the
16 Plaintiff.

17 **NINTH AFFIRMATIVE DEFENSE**

18 51. Defendant is informed and believes and upon such information and
19 belief alleges that Plaintiff has failed to mitigate the damages referred to in the
20 First Amended Complaint, barring relief, in whole or in part, as to this answering
21 Defendant.

22 **TENTH AFFIRMATIVE DEFENSE**

23 52. This answering Defendant is informed and believes and thereon
24 alleges that Plaintiff's claims are barred by Plaintiff's own willful misconduct.

25 **ELEVENTH AFFIRMATIVE DEFENSE**

26 53. This answering Defendant is informed and believes and thereon
27 alleges that Plaintiff's claims are barred by the doctrine of estoppel.
28

1 **TWELFTH AFFIRMATIVE DEFENSE**

2 54. This answering Defendant is informed and believes and thereon
3 alleges that Plaintiff's claims are barred by the doctrine of waiver.

4 **THIRTEENTH AFFIRMATIVE DEFENSE**

5 55. This answering Defendant is informed and believes and thereon
6 alleges that the First Amended Complaint and the averments thereof are uncertain,
7 vague and ambiguous.

8 **FOURTEENTH AFFIRMATIVE DEFENSE**

9 56. This answering Defendant is informed and believes and thereon
10 alleges that the First Amended Complaint and every cause of action contained
11 therein, is barred by the provisions of California Code of Civil Procedure Sections
12 337, 337.1, 337.15, 338, 339, 339.5, 340, 342, 343, as well as Civil Code Section
13 2079.4, and any and all other applicable statutes of limitation.

14 **FIFTEENTH AFFIRMATIVE DEFENSE**

15 57. This answering Defendant is informed and believes and thereon
16 alleges that Plaintiff has voluntarily engaged in wrongful and bad faith conduct and
17 activities with respect to the matters and transactions referred to in the First
18 Amended Complaint herein, barring any and all relief against this answering
19 Defendant under the doctrine of unclean hands.

20 **SIXTEENTH AFFIRMATIVE DEFENSE**

21 58. This answering Defendant is informed and believes and thereon
22 alleges that Plaintiff's claims that Defendant engaged in unfair debt collection
23 practices in violation of the Fair Debt Collections Practices Act and California
24 Civil Code §§1788, et seq., are barred by other provisions of Federal and
25 California State law.

26 //

27 //

28 //

1 **SEVENTEENTH AFFIRMATIVE DEFENSE**

2 59. This answering Defendant is informed and believes and thereon
3 alleges that Plaintiff has failed to plead with particularity the circumstances
4 constituting the alleged fraud and/or misrepresentation.

5 **EIGHTEENTH AFFIRMATIVE DEFENSE**

6 60. This answering Defendant is informed and believes and thereon
7 alleges that Plaintiff has engaged in conduct and activities, pursuant to which she
8 has waived any and all claims and/or causes of action she may have against this
9 answering Defendant.

10 **NINETEENTH AFFIRMATIVE DEFENSE**

11 61. This answering Defendant is informed and believes and thereon
12 alleges that Plaintiff has engaged in conduct and activities by reason of which she
13 is estopped to assert any claim or cause of action against this answering Defendant.

14 **TWENTIETH AFFIRMATIVE DEFENSE**

15 62. This answering Defendant is informed and believes and thereon
16 alleges that Plaintiff has not suffered any injury or damage whatsoever, and further
17 denies that Defendant is liable to Plaintiff for any injury or damage whatsoever.

18 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

19 63. This answering Defendant is informed and believes and thereon
20 alleges that this Defendant has met all appropriate standards for professional
21 conduct according to all rules promulgated in the Business and Professions and
22 Civil Code Sections.

23 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

24 64. This answering Defendant is informed and believes and thereon
25 alleges that the Plaintiff's claims are barred, because the alleged acts of Defendant,
26 forming the basis of the First Amended Complaint, were lawful, explicitly
27 approved and/or exempt from prosecution.

1 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

2 65. This answering Defendant is informed and believes and thereon
3 alleges that Plaintiff's claims are barred, in whole or in part, because Defendant, at
4 all times, acted in good faith and did not directly or indirectly perform any act
5 whatsoever that would constitute a violation of any right of Plaintiff's or any duty
6 owed to Plaintiff.

7 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

8 66. This answering Defendant is informed and believes and thereon
9 alleges that the alleged representations are not actionable statements of fact under
10 applicable law.

11 **TWENTY-FIFTH AFFIRMATIVE DEFENSE**

12 67. This answering Defendant denies each and every claim of Plaintiff
13 and denies that Defendant engaged in any wrongdoing or error of any kind.
14 However, should any alleged error be identified, then Plaintiff's claims are barred
15 because any alleged error on Defendant's part was a bona fide error
16 notwithstanding Defendant's use of reasonable procedures adopted to avoid any
17 such error.

18 **TWENTY-SIXTH AFFIRMATIVE DEFENSE**

19 68. This answering Defendant is informed and believes and thereon
20 alleges that Plaintiff has failed to set forth facts sufficient to support an award for
21 attorneys' fees.

22 **TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

23 69. This answering Defendant is informed and believes and thereon
24 alleges that it is entitled to the reasonable value of its attorneys' fees, costs of suit
25 and other litigation expenses incurred in the defense of this action.

26 **TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

27 70. This answering Defendant is informed and believes and thereon
28 alleges that the First Amended Complaint and the purported causes of action

1 alleged therein fail to set forth facts sufficient to allow for recovery of punitive or
2 exemplary damages from Defendant.

3 **TWENTY-NINTH AFFIRMATIVE DEFENSE**

4 71. This answering Defendant is informed and believes and thereon
5 alleges that the First Amended Complaint, to the extent it seeks punitive or
6 exemplary damages, violates the rights of Defendant to procedural and substantive
7 due process under the Fourteenth Amendment to the United States Constitution
8 and under the Constitution of the State of California.

9 **THIRTIETH AFFIRMATIVE DEFENSE**

10 72. This answering defendant alleges that plaintiff lacks the standing to
11 bring suit against this answering defendant before this Court.

12 **THIRTY-FIRST AFFIRMATIVE DEFENSE**

13 73. This answering defendant alleges that the negligent actions of others
14 constitute superseding, intervening causes of Plaintiff's alleged injuries and/or
15 damages.

16 **THIRTY-SECOND AFFIRMATIVE DEFENSE**

17 74. This answering defendant alleges that Plaintiff's First Amended
18 Complaint and each purported cause of action therein are barred by the doctrines of
19 express and implied consent by Plaintiff.

20 **THIRTY-THIRD AFFIRMATIVE DEFENSE**

21 75. This answering Defendant is informed and believes and thereon
22 alleges that the Plaintiff's First Amended Complaint, and each cause of action
23 therein, is stated in conclusory terms, and therefore said Defendant cannot fully
24 anticipate all affirmative defenses which may be applicable to this action.
25 Accordingly, this answering Defendant reserves the right to add additional
26 affirmative defenses.

27 WHEREFORE, this answering Defendant prays judgment against Plaintiff
28 as follows:

- 1 1. That Plaintiff take nothing by way of the First Amended Complaint;
2 2. That Judgment be entered in favor of Defendant and against Plaintiff
3 on all causes of action;
4 3. For attorneys' fees and costs of suit incurred herein; and
5 4. For such other and further relief as the Court may deem just and
6 proper.

7
8 Dated: March 16, 2016

FARMER CASE & FEDOR
By:

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10
11 /s/ Michele M. Angeles
12 ANTHONY T. CASE, ESQ.
13 MICHELE M. ANGELES, ESQ.
14 Attorneys for Defendant
15 REPOSSESSION SPECIALISTS, INC. a
16 California corporation
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